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Viewing cable 06BRATISLAVA720, SLOVAKIA REMAINS FOCUSED ON REGAINING TRANSPETROL

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Understanding cables

Every cable message consists of three parts:

- The top box shows each cables unique reference number, when and by whom it originally was sent, and what its initial classification was.
- The middle box contains the header information that is associated with the cable. It includes information about the receiver(s) as well as a general subject.
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| Reference ID | Created | Released | Classification | Origin |
|---------------------------------|----------------------------------|----------------------------------|------------------------|------------------------------------|
| 06BRATISLAVA720 | 2006-08-25 14:33 | 2011-08-30 01:44 | SECRET | Embassy Bratislava |

Appears in these articles:

<http://www.mcclatchydc.com/2011/05/16/114269/wikileaks-cables-show-oil-a-major.html>

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S E C R E T SECTION 01 OF 03 BRATISLAVA 000720

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E.O. 12958: DECL: 08/25/2016

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SUBJECT: SLOVAKIA REMAINS FOCUSED ON REGAINING TRANSPETROL
STAKE

REF: A. BRATISLAVA 673

1B. BRATISLAVA 657

1C. BRATISLAVA 618

1D. BRATISLAVA 529

Classified By: Ambassador Rodolphe M. Vallee for reasons 1.4 b) and d)

This is an action request. Please see Para. 7.

11. (S) Summary - The Ministry of Economy continues to pursue a deal to buy back the 49 percent stake in Transpetrol from Netherlands-based Yukos Finance and/or its subsidiary Yukos International. This task was complicated when a Dutch judge appointed Yukos Oil Receiver and Russian Eduard Rebgun as the receiver for Yukos Finance on August 11, effectively splitting control over the two entities both laying claim to the ownership of the Transpetrol shares. Yukos International remains committed to completing the sale, and Economy Minister Lubomir Jahnatek would support going this route if he could get a solid legal opinion from the Netherlands that Yukos International is able to complete the transaction alone. Jahnatek has also contacted Rebgun and tentatively agreed to meet with him and the new director of Yukos Finance in the coming weeks. Recognizing that Rebgun may also be considering other options, Jahnatek is pursuing other strategies that would encourage Rebgun to strike a deal with the GOS. These include gaining support in Brussels for a GOS buyback, using Slovakia's rights as a shareholder to block any non-GOS deal, and possibly threatening to nationalize the pipeline. Despite the legal uncertainty and strategic complications Minister Jahnatek remains fully committed to his goal of gaining control of 100 percent of the Transpetrol shares. End Summary.

CHANGE OF CONTROL AT YUKOS FINANCE COMPLICATES THE DEAL

12. (S) On August 11, the day after the GOS reached a preliminary deal with Yukos Finance (YF) and Yukos International (YI) representatives Steve Theede and Bill Schoff to repurchase the Transpetrol shares (Reftel A), a Dutch judge gave control of YF to Yukos Oil Receiver Eduard Rebgun. Rebgun immediately dismissed YF Directors David Godfrey and Bruce Misamore. The split ownership of the two Netherlands-based Yukos entities further complicated the sale of the shares to the GOS. YF remains the legal owner of Transpetrol shares pending the approval by the Slovak government of the transfer to YI. (Note: As outlined in Reftel A, Minister Jahnatek agreed to approve the transfer to YI contingent on a YI sale to the GOS. Although he signed a letter to this effect on August 10, approval of the Transpetrol General Assembly is required to for the transfer to YI. This has not yet taken place and could now be blocked by Rebgun.) Still, YI is the beneficial owner of the Transpetrol shares and also has physical possession of the shares.

13. (S) Lawyers at the Ministry of Economy have held conversations with YI lawyers to determine whether the GOS can legally finalize the sale without the approval of YF. According to the Slovak lawyers, the GOS can only repurchase the shares from the company that is listed as the owner in the Slovak Commercial Registry, which in this case is YF. Furthermore, Slovak law does not recognize the concept of beneficial ownership, although it appears English law governs the Shareholder's Agreement. The MOE lawyers have asked for clarification from YI on the difference between beneficial and legal ownership of the shares. The YI lawyers are willing to work with the Slovaks, but have been unable to answer the Ministry of Economy (MOE) questions or develop an alternative legal strategy for completing this transaction. (Note: YI lawyers have explained to the GOS that they are focused on other legal issues, including preparing a defense for YI executives who are facing criminal charges in Moscow.) Max Kaluzhny, a lawyer representing YI in the Netherlands, believes that two provisions in the 2005 Share Transfer Agreement between YF and YI support YI's ability to sell the Transpetrol shares to the GOS. First, the agreement states

that YF is required to take the necessary actions to complete the transfer of shares to YF. Second, YI has irrevocable power of attorney over the shares. Ultimately, the Dutch bankruptcy court would have to decide whether YI has the rights to sell the shares.

WILL REBGUN PLAY BALL?

¶5. (S) Before moving forward with a deal that excludes YF, Slovak and YI officials agreed that the MOE should reach out to Rebgun and the new YF directors about a possible deal with both YI and YF. A GOS deal with both Yukos entities (and thus the nod of approval from Moscow as well) would provide the greatest legal assurance that the sale would not be challenged in the future. Even if such a deal is not successful, reaching out to Rebgun demonstrates to the court that the GOS made a good faith effort to work with YF. (Note: Steve Theede and David Godfrey, two of the Yukos officials named in the criminal case in Moscow, told us that they doubt that Rebgun would be willing to negotiate with the Slovaks. They expect Rebgun to use a "pocket veto" and wait until the GOS loses its right of veto in April 2007. End note.)

¶6. (S) Minister Jahnatek sent a letter August 16 to Rebgun expressing the GOS' interest in reaching an agreement for the Transpetrol stake and asking for a meeting to discuss this possibility. The GOS sent a similar message to Sergei Smelkov, a long-time Rebgun associate who was recently appointed as the new Board Director of YF. Rebgun called Jahnatek's advisor on August 24 to say that he would be interested in discussing the transaction. Rebgun noted that he was still in the middle of taking over YF and needed more time to evaluate the company's assets. Rebgun tentatively agreed to meet with Jahnatek in either Moscow or Bratislava in two to three weeks. MOE received a similar expression of interest from Smelkov.

GOS LOOKING TO BOLSTER ARGUMENTS, CREATE BACKUP STRATEGIES

¶7. (S) In a two and half hour dinner with the Ambassador on August 24, Jahnatek outlined his strategy for negotiating with YF. His goals for the eventual meeting with Rebgun and Smelkov will be (1) to determine whether Rebgun is willing to negotiate or already has a predetermined plan for the Transpetrol shares and (2) to convince Rebgun that YF does not have any other viable alternatives besides selling the Transpetrol stake to the Slovak government. This second position was clearly laid out in his August 16 letter to Rebgun. To help build his case, Jahnatek will raise the issue in Brussels when he meets with EU Energy Commissioner Andris Piebalgs in early September. Jahnatek would like to leave Brussels with an expression of EU support for his government's desire to repurchase the 49 percent interest in Transpetrol based on a desire for energy independence and diversification of energy supplies, both for Slovakia and central Europe in general. Jahnatek requested that we use our influence with the EU to help solidify European support for GOS independence by repurchasing the Yukos shares. BEGIN ACTION REQUEST: Post requests talking points to be used by USEU with appropriate counterparts in the EC supporting Slovakia's efforts to repurchase the Yukos shares. END ACTION REQUEST.

¶8. (S) Jahnatek asserted that the Slovak government was willing to play hardball if Rebgun tries to run out the clock and make a deal with a third party after April 2007. He stated that according to Transpetrol's Articles of Association the MOE, as the holder of 51 percent of the shares, would have to agree to a change in ownership, and that he would be willing to hold back the government's approval of any future deal. Jahnatek suggested that he would prefer a legal stalemate over a sale to Gazprom or another company, at least until the GOS regains management control of the company. He also warned that under Article 20

of the Slovak Constitution the GOS has the right to nationalize the company. Finally, Jahnatek told us that he met with Russian Foreign Minister Sergey Lavrov when he was in Moscow in late July and had received his support for a Slovak buyback of the shares from Yukos. If necessary, Jahnatek suggested, he could ask Lavrov to weigh in with Rebgun.

¶9. (S) If Rebgun is not willing to negotiate or appears to be stalling for time, Jahnatek maintained that he would pursue a deal with YI, assuming he could get a clear and defensible legal opinion from a reputable Dutch counsel that YI has the right to complete the transaction based solely on YI's beneficial ownership of the shares. MOE officials have many questions about how this would work, but are willing to pursue this option if negotiations with Rebgun do not bear any fruit.

FACTS AROUND SALE ALSO SHIFTING

¶10. (S) The Minister had learned of Oleksandr Todiychuk's 8/23 removal as CEO of Ukrtransnafta, the Ukrainian pipeline operator, and recognized that this would delay progress towards transporting Caspian oil through the pipeline. Jahnatek identified three other options that Slovakia should pursue to diversify the supply of oil: 1) completing the connection to Schwechat with the potential of purchasing oil imported from Western European pipelines; 2) making the connection to Adria functional; and 3) connecting to Ingoldstadt through the Czech Republic. He noted that full GOS control of Transpetrol is necessary to follow through with these objectives. Jahnatek believes that the Russians could not boost the throughput in Druzhba by more than 1.5 million tons of Russian crude per year, which still provides enough "space" for other non-Russian oil before the pipeline would reach its capacity of 17 million tons.

¶11. (S) Jahnatek informed us that there was positive news in the government's long-running legal battle with Ignac Ilcisin over his claim to 34 percent of the Transpetrol shares, which account for two-thirds of the GOS shares (Reftel D). The Slovak Supreme Court recently canceled the district court ruling allowing Ilcisin to convene an extraordinary general shareholder meeting of Transpetrol under Ilcisin's leadership. The Supreme Court, acting on an initiative by the Prosecutor General who lodged an appeal on behalf of Transpetrol, returned the case to the district court. Minister Jahnatek does not expect further problems from Mr. Ilcisin.

COMMENT

¶12. (S) Minister Jahnatek, with the continued support of Prime Minister Fico and President Gasparovic, remains fully committed to regaining full control of the Shares of Transpetrol. He is aware of the challenges, but also believes that Slovakia has no other options if they are to fulfill their strategic goals of diversifying supply and further developing the Transpetrol pipeline. That being said, the minister appeared exhausted, although still confident, from being thrown into the political maelstrom from his relatively stable life in the private sector. He is concurrently engaged in a battle with the electricity and natural gas companies over their monopoly pricing powers, as well as the cancellation of the previous government's decision to sell Bratislava airport to a consortium made up of Vienna's Schwechat Airport and Slovak financier Penta. Powerful forces are being disturbed, he noted, suggesting that shady private equity firm Penta was behind recent SMS threats to his person and demurring on Ambassador's request to hunt due to his "safety concerns." He told us he was under particular assault from some of his own legislative party members, who were undermining him with PM Fico. He requested subtle public support for his efforts, if possible. While noting that "these are my negotiations," Jahnatek is extremely appreciative of U.S. support, and will continue to

look to Steve Hellman and the Embassy for information and guidance. End Comment

VALLEE